

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

**Rule making related to nurse aide program training**

The Human Services Department hereby amends Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code chapter 249A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 249A.

*Purpose and Summary*

This rule making updates subrule 81.16(3) to reflect federal regulations regarding the increased number of hours of training required for nurse aide programs. The increase of the instructor-to-student ratio will allow more students to attend nurse aide programs. Language is also added for laboratory training and clinical training options.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on March 9, 2022, as **ARC 6234C**.

The Department received five comments from five respondents on the proposed rule making. The comments and corresponding responses from the Department are divided into three topic areas as follows:

**Hours of Laboratory Experience:**

**Comments:** There were five comments in this topic area. All five comments supported the amendment changing 15 hours of laboratory experience to 16 hours to align with federal regulations.

**Response:** This is a technical amendment to align with the federal regulations.

**Laboratory Settings:**

**Comment 1:** One respondent commented that while the respondent understands the intent of the proposed changes and that the changes may have been appropriate during the pandemic, this provision is no longer necessary and will have unintended consequences. The respondent’s concerns are related to the following:

1. Quality of training received by nurse aide trainees;
2. An interruption in an important recruiting tool for Iowa’s health care facilities;
3. Practical application of skills students are being taught in the clinical setting versus a laboratory setting;
4. Concern for the lack of opportunity to see and respond to real-time challenges faced on the job;
5. Learning the necessary skill sets, applying those skill sets, and preparedness to ensure success;
6. Loss of the facilities’ ability to use clinicals as a form of recruitment, workforce talent, and lack of student’s ability to observe how a facility operates.

The respondent did not support the proposed amendments.

**Response 1:** The Department understands the concerns brought forth, and the intent of the rule making is to meet the needs of both the facility industry and the educational programs. Consequently, the Department has further amended subparagraph 81.16(3)“a”(5) in Item 2 to address respondent concerns.

**Comment 2:** One respondent opposed the proposed amendment to allow laboratory settings as an alternative to face-to-face clinical settings. The respondent stated that while the respondent understands

that the COVID-19 pandemic made it challenging to train nurse aides in a face-to-face setting and the need for laboratory settings to continue in order to add to the workforce in a critical time, the face-to-face setting is critical to prepare the future nurse aides to safely care for the nursing facility population. The respondent's specific concerns with the lack of face-to-face clinical training are:

1. Mannequins or fellow trainees do not fully prepare students for the full scope of duties;
2. Professionalism;
3. Interpersonal skills required to excel when working with older adults;
4. Lack of actual work environment with noise and busy settings;
5. Lack of experience transferring residents who are immobile;
6. Increased risk of injuries and identify gaps in training and understanding.

**Response 2:** The Department understands the concerns brought forth, and the intent of the rule making is to meet the needs of both the facility industry and the educational programs. Consequently, the Department has further amended subparagraph 81.16(3)"a"(5) in Item 2 to address respondent concerns.

**Comment 3:** One respondent commented that if COVID-19 taught us anything, it taught us the need to be flexible and prepared for extenuating circumstances. The respondent stated that many understand the need for hands-on clinical training experience but also understand there may be times students cannot complete the training in a facility setting, and by adding "laboratory settings" to the rule, it allows options and flexibility when needed. The respondent also stated that including laboratory settings options may assist in the learning needs of the student.

This respondent supported the amendments.

**Response 3:** The intent of the rule making is to meet the needs of both the facility industry and the educational programs. The Department understands the need for some flexibility but must ensure the quality of care and safety of the residents receiving care in the facility setting.

**Comment 4:** One respondent expressed support for the proposed amendment since it would provide the opportunity to train in both clinical and laboratory training settings. The respondent, noting continued prioritization of training students in a live setting, stated there are times live settings are not available; for example, pandemic shutdowns, immunizations requirements, or facilities not being eligible as training sites due to negative survey results.

**Response 4:** The intent of the rule making is to meet the needs of both the facility industry and the educational programs. The Department understands the need for some flexibility but must ensure the quality of care and safety of the residents receiving care in the facility setting.

**Comment 5:** One respondent expressed support for the proposed amendments.

**Response 5:** The intent of the rule making is to meet the needs of both the facility industry and the educational programs. The Department understands the need for some flexibility but must ensure the quality of care and safety of the residents receiving care in the facility setting.

**Instructor-to-Student Ratio:**

**Comment 1:** One respondent commented that by increasing instructor-to-student ratios, there will be a reduction in the quality of training provided to each student. The respondent stated that appropriate training requires direct interaction between the instructor and students to maximize learning opportunities and reduce errors and that increasing the ratio makes that goal significantly challenging in a workforce shortage.

The respondent did not support the proposed amendments.

**Response 1:** The intent of the rule making is to meet the needs of both the facility industry and the educational programs. The Department understands the need for some flexibility but must ensure the quality of care and safety of the residents receiving care in the facility setting and adequate staffing for nursing facilities. The Department adopted the proposed amendment increasing the ratio of students to instructor to 15 to 1. The Department also added an amendment to further align with federal regulations regarding other personnel from health professions that may supplement the instructor.

**Comment 2:** One respondent commented that the ratio needs to remain at ten students to one instructor. The respondent's stance is that the current ratio already stretches the capacity of the instructor in clinical settings and additional students could lead to a quality issue and hinder students from passing

the course. The respondent stated that a balance must be determined to maintain adequate training standards and preparation of nurse aides to meet demands in the field.

This respondent did not support the proposed changes.

**Response 2:** The intent of the rule making is to meet the needs of both the facility industry and the educational programs. The Department understands the need for some flexibility but must ensure the quality of care and safety of the residents receiving care in the facility setting and adequate staffing for nursing facilities. The Department adopted the proposed amendment increasing the ratio of students to instructor to 15 to 1. The Department also added an amendment to further align with federal regulation regarding other personnel from health professions that may supplement the instructor.

**Comment 3:** One respondent commented that in talking with stakeholders within the industry, the respondent believes the ratio should remain one instructor to ten students. This respondent has conducted many surveys that show direct care workers leave the field due to the feeling of being unprepared to perform duties expected on the job.

This respondent did not support the proposed amendments.

**Response 3:** The intent of the rule making is to meet the needs of both the facility industry and the educational programs. The Department understands the need for some flexibility but must ensure the quality of care and safety of the residents receiving care in the facility setting and adequate staffing for nursing facilities. The Department adopted the proposed amendment increasing the ratio of students to instructor to 15 to 1. The Department also added an amendment to further align with federal regulation regarding other personnel from health professions who may supplement the instructor.

**Comment 4:** One respondent encouraged the Department to keep the current ratio of ten students to one instructor. The respondent expressed concern that students may miss out on critical instructions due to the number of students in the class and that the increased number will cause hardship to the instructor to supervise the students in transfers and other clinical trainings.

**Response 4:** The intent of the rule making is to meet the needs of both the facility industry and the educational programs. The Department understands the need for some flexibility but must ensure the quality of care and safety of the residents receiving care in the facility setting and adequate staffing for nursing facilities. Allowing ratios of up to 15 students to 1 instructor will provide flexibility to individual programs to determine how to maintain quality of education. The Department added an amendment to further align with federal regulation regarding other personnel from health professions who may supplement the instructor.

**Comment 5:** One respondent commented that increased ratios cause difficulties for the instructors to oversee successful clinical performance due to the unavailability of instructors to the students when needed. The respondent stated that the larger the group, the more frustration and stress it creates for instructors and students, and students must wait for the instructor to be available to demonstrate their training.

This respondent did not support the proposed amendments.

**Response 5:** The intent of the rule making is to meet the needs of both the facility industry and the educational programs. The Department understands the need for some flexibility but must ensure the quality of care and safety of the residents receiving care in the facility setting and adequate staffing for nursing facilities. The Department adopted the proposed amendment increasing the ratio of students to instructor to 15 to 1. The Department also added an amendment to further align with federal regulation regarding other personnel from health professions who may supplement the instructor.

The following changes from the Notice have been made:

1. To clarify when a laboratory setting may be used, the Department revised subparagraph 81.16(3)“a”(5) in Item 2 to remove the proposed addition of “or laboratory setting” and to add a sentence stating that in extenuating circumstances, a laboratory setting may be utilized in place of face-to-face clinical training subject to the Department’s approval.

2. The Department amended numbered paragraph 81.6(3)“a”(7)“4” to add a reference to 42 CFR 483.152(5) as shown in Item 3.

### *Adoption of Rule Making*

This rule making was adopted by the Council on Human Services on June 9, 2022.

### *Fiscal Impact*

The Department currently does not pay for certified nursing assistant (CNA) training but allows for a deduction on the cost reports. The number of future additional students cannot be determined; however, fiscal impact is expected to be minimal. Any expenditures will be absorbed within the Medical Assistance appropriation.

### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

### *Effective Date*

This rule making will become effective on September 1, 2022.

The following rule-making actions are adopted:

ITEM 1. Amend subparagraph **81.16(3)“a”(4)** as follows:

(4) Include at least ~~15~~ 16 hours of laboratory experience provided in a face-to-face environment that complements the didactic theory curricula, and

ITEM 2. Amend subparagraph **81.16(3)“a”(5)** as follows:

(5) Include 30 hours of supervised clinical training in a face-to-face environment and supervised by a department of inspections and appeals-approved instructor in a manner not inconsistent with the licensing requirements of the Iowa board of nursing. In extenuating circumstances, a laboratory setting may be utilized in place of face-to-face clinical training subject to the department's approval, and

ITEM 3. Amend subparagraph **81.16(3)“a”(7)** as follows:

(7) Meet the following requirements for department of inspections and appeals-approved instructors who train nurse aides:

1. to 3. No change.

4. Other personnel from the health professions as set forth in 42 CFR 483.152(5) may supplement the instructor. Supplemental personnel shall have at least one year of experience in their fields.

5. The ratio of department of inspections and appeals-approved instructors to students shall not exceed one registered nurse, or licensed practical nurse functioning as an assistant to a registered nurse, who is in the proximate area in the clinical setting, for every ~~ten~~ 15 students in the clinical setting, and

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/29/22.